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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 25, 2019

SEAN F. MCAVOY, CLERK

8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 DONALD L. RICKER,

14 Defendant.

2:18-CR-00154-WFN

PLEA AGREEMENT

17 Plaintiff, United States of America, by and through William D. Hyslop,
18 United States Attorney for the Eastern District of Washington, and James A.
19 Goeke, Assistant United States Attorney for the Eastern District of Washington,
20 and Defendant DONALD L. RICKER and Defendant's counsel, Andrea K.
21 George, agree to the following Plea Agreement pursuant to Federal Rule of
22 Criminal Procedure 11(c)(1)(C):

23 1. Guilty Plea and Maximum Statutory Penalties:

24 The Defendant, DONALD L. RICKER, agrees to plead guilty, pursuant to
25 Fed. R. Crim. P. 11(c)(1)(C) to the Indictment in this case charging Defendant
26 with Production of Child Pornography, in violation of 18 U.S.C. § 2251(a).
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1 Defendant understands that the charge of Production of Child
2 Pornography, in violation of 18 U.S.C. § 2251(a), carries a maximum penalty of
3 not less than fifteen years nor more than thirty years imprisonment, a fine not to
4 exceed \$250,000; a term of supervised release of not less than 5 years up to life;
5 a \$100 special penalty assessment; and a \$5,000 special assessment pursuant to
6 the Justice for Victims of Trafficking Act of 2015, unless the Court finds
7 Defendant to be indigent. Defendant understands that a violation of a condition
8 of supervised release carries an additional penalty of re-imprisonment for all or
9 part of the term of supervised release without credit for time previously served
10 on post-release supervision.

11 2. The Court is Not a Party to the Agreement:

12 The Court is not a party to this Plea Agreement and may accept or reject
13 this Plea Agreement. Sentencing is a matter that is solely within the discretion
14 of the Court. Defendant understands that the Court is under no obligation to
15 accept any recommendations made by the United States and/or by Defendant;
16 that the Court will obtain an independent report and sentencing recommendation
17 from the U.S. Probation Office; and that the Court may, in its discretion, impose
18 any sentence it deems appropriate up to the statutory maximums stated in this
19 Plea Agreement.
20

21 Defendant acknowledges that no promises of any type have been made to
22 Defendant with respect to the sentence the Court will impose in this matter.
23 Defendant understands that the Court is required to consider the applicable
24 sentencing guideline range, but may depart upward or downward under the
25 appropriate circumstances.

26 The United States and Defendant agree that this Plea Agreement is
27 entered pursuant to Fed. R. Crim. P. 11(c)(1)(C) and to jointly recommend
28 Defendant be sentenced to 15 years imprisonment. Defendant further

1 understands that because this is a Plea Agreement pursuant to Fed. R. Crim. P.
2 11(c)(1)(C), the United States may withdraw from this Plea Agreement if the
3 Court imposes a lesser sentence than 15 years imprisonment. Defendant further
4 understands that Defendant will have the option to withdraw from this Plea
5 Agreement if the Court imposes a sentence harsher than 15 years imprisonment.

6 3. Waiver of Constitutional Rights:

7 The Defendant, DONALD L. RICKER, understands that by entering this
8 plea of guilty Defendant is knowingly and voluntarily waiving certain
9 constitutional rights, including:

- 10 (a). The right to a jury trial;
11 (b). The right to see, hear and question the witnesses;
12 (c). The right to remain silent at trial;
13 (d). The right to testify at trial; and
14 (e). The right to compel witnesses to testify.

15 While Defendant is waiving certain constitutional rights, Defendant
16 understands Defendant retains the right to be assisted through the sentencing and
17 any direct appeal of the conviction and sentence by an attorney, who will be
18 appointed at no cost if Defendant cannot afford to hire an attorney. Defendant
19 also acknowledges that any pretrial motions currently pending before the Court
20 are waived.

21 4. Elements of the Offense:

22 The United States and Defendant agree that in order to convict Defendant
23 of Production Child Pornography, in violation of 18 U.S.C. § 2251(a), the
24 United States would have to prove beyond a reasonable doubt the following
25 elements:
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- 1 • First: Defendant used a minor to take part in sexually explicit
- 2 conduct for the purpose of producing a visual depiction of such
- 3 conduct;
- 4 • Second: at the time of the offense the minor was under the age of
- 5 eighteen;
- 6 • Third: the visual depiction was produced using materials that had
- 7 been mailed, shipped, or transported across state lines or in foreign
- 8 commerce or the visual depiction was mailed or actually
- 9 transported across state lines or in foreign commerce.

10 5. Factual Basis and Statement of Facts:

11 The United States and Defendant stipulate and agree that the following

12 facts are accurate; that the United States could prove these facts beyond a

13 reasonable doubt at trial; and these facts constitute an adequate factual basis for

14 Defendant DONALD L. RICKER's guilty plea. This statement of facts does not

15 preclude either party from presenting and arguing, for sentencing purposes,

16 additional facts which are relevant to the United States Sentencing Guidelines

17 computation or sentencing, unless otherwise prohibited in this agreement.

18 During June 2018, in the Eastern District of Washington, the Defendant,

19 DONALD L. RICKER, created several visual electronic images of a sixteen year

20 old girl as follows:

- 21 • an image of Victim 1 laying on her back with her hand wrapped
- 22 around an adult male penis, pressed against her genitals;
- 23 • two close-up images, at slightly different distances, of Defendant's
- 24 penis inside Victim 1's vagina;
- 25 • a further-zoomed-out image depicting Victim 1 laying on her back
- 26 with Defendant's penis inside Victim 1's vagina. Victim 1's face,
- 27
- 28

1 unclothed body, and vagina with a male penis are all visible in this
2 image.

3 Defendant knowingly produced the images of child pornography detailed
4 above with a cellular phone that was manufactured outside Washington State
5 and transmitted these images of child pornography using the internet to another
6 individual.

7 6. The United States Agrees:

8 The United States Attorney's Office for the Eastern District of
9 Washington agrees not to bring any additional charges against Defendant based
10 upon information in its possession at the time of this Plea Agreement and arising
11 out of Defendant's conduct involving illegal activity charged in the Indictment
12 in this case, unless Defendant breaches this Plea Agreement any time before or
13 after sentencing.

14 7. United States Sentencing Guideline Calculations:

15 The Defendant understands and acknowledges that the United States
16 Sentencing Guidelines (hereinafter "USSG") are applicable to this case and that
17 the Court will determine Defendant's applicable sentencing guideline range at
18 the time of sentencing.

19 (a.) Base Offense Levels:

20 The United States and Defendant agree that the base offense level for
21 Production of Child Pornography is 32 pursuant to USSG §2G2.1(a).

22 (b.) Specific Offense Characteristics:

23 Defendant further understands his offense base offense level will likely be
24 increased by the following specific offense characteristics:

25 The United States and Defendant agree and stipulate that the base offense is
26 increased by an additional two (2) levels because the offense involved the
27 commission of sexual act or contact pursuant to USSG §2G2.1(b)(2)(A).
28

1 The United States and Defendant agree and stipulate that the base offense is
2 increased by an additional two (2) levels because the offense involved distribution
3 pursuant to USSG §2G2.1(b)(3).

4 The United States and Defendant agree and stipulate that the base offense is
5 increased by an additional two (2) levels because the offense involved a computer
6 service pursuant to USSG §2G2.1(b)(6).

7 The United States and Defendant are free to advocate for or against any
8 other enhancements and/or reductions under the USSG set forth in the Pre-
9 Sentence Investigative Report and/or found to apply by the Court.

10 (c.) Acceptance of Responsibility:

11 If Defendant pleads guilty and demonstrates a recognition and affirmative
12 acceptance of personal responsibility for the criminal conduct; provides
13 complete and accurate information during the sentencing process; does not
14 commit any obstructive conduct; and accepts this Plea Agreement; the United
15 States will move for a three (3) level downward adjustment in the offense level
16 for Defendant's timely acceptance of responsibility, pursuant to USSG
17 §3E1.1(a) and (b).

18 The Defendant and the United States agree that the United States may at
19 its option and upon written notice to Defendant, not recommend a three (3) level
20 downward reduction for acceptance of responsibility if, prior to the imposition
21 of sentence, Defendant is charged ^{commits, and a kg} or convicted of any criminal offense
22 ^{D.B. JAG} whatsoever or if Defendant tests positive for any controlled substance.
23

24 (d.) Criminal History:

25 The United States and Defendant understand that Defendant's criminal
26 history computation is tentative and that ultimately Defendant's criminal history
27 category will be determined by the Court after review of the Presentence
28 Investigative Report. The United States and Defendant have made no agreement

1 and make no representations as to the criminal history category, which shall be
2 determined after the Pre-Sentence Investigation Report is completed.

3 8. Jointly Recommended Term of Imprisonment:

4 The United States and Defendant agree that this Plea Agreement is
5 entered pursuant to Fed. R. Crim. P. 11(c)(1)(C) and to jointly recommend
6 Defendant be sentenced to 15 years imprisonment.

7 9. Criminal Fine:

8 The United States and Defendant are free to make whatever
9 recommendation concerning the imposition of a criminal fine that they believe is
10 appropriate. Neither party may withdraw from the Plea Agreement based on the
11 ultimate fine imposed.

12 10. Supervised Release:

13 The United States and Defendant have no agreement regarding a term of
14 supervised release and either party may recommend any legal term of supervised
15 release and may recommend or oppose any legal terms of supervision. Neither
16 party may withdraw from the Plea Agreement based on the ultimate term of
17 supervised release imposed.

18 11. Restitution:

19 The United States and Defendant hereby stipulate and agree that pursuant
20 to 18 U.S.C. § 2259, the Court will order restitution for the full amount of the
21 Victim 1's losses. For purposes of 18 U.S.C. § 2259, "victim," means the
22 individual harmed as a result of a commission of the crime, including, in the
23 case of a victim who is under 18 years of age, the legal guardian of the victim.
24 The United States and Defendant also hereby stipulate and agree that the Court
25 shall order full restitution, as appropriate, to any entity, organization, insurance
26 company, individual(s), and/or medical provider who provided medical services
27 and/or funds related to the treatment of Victim 1.
28

1 Defendant further understands that compliance with any restitution
2 payment plan imposed by the Court in no way precludes the United States from
3 simultaneously pursuing other statutory remedies for collecting restitution (18
4 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution,
5 pursuant to the Mandatory Victims Restitution Act, in order to ensure that
6 Defendant's restitution obligation is satisfied.

7 Neither party may withdraw from the Plea Agreement based on the
8 ultimate amount or restitution ordered.

9 12. Mandatory Special Penalty Assessments:

10 The Defendant agrees to pay the \$100 mandatory special penalty
11 assessment to the Clerk of Court for the Eastern District of Washington, at or
12 before sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from
13 the Clerk to the United States before sentencing as proof of this payment.

14 Pursuant to the Justice for Victims of Trafficking Act of 2015, upon
15 conviction, unless the Sentencing Court finds the defendant to be indigent, an
16 additional mandatory special assessment of \$5,000 must also be imposed.

17 13. Payments While Incarcerated:

18 If Defendant lacks the financial resources to pay the monetary obligations
19 imposed by the Court, Defendant agrees to earn the money to pay toward these
20 obligations by participating in the Bureau of Prisons' Inmate Financial
21 Responsibility Program.

22 14. Additional Violations of Law Can Void Plea Agreement:

23 Defendant and the United States agree that the United States may at its
24 option and upon written notice to Defendant, withdraw from this Plea Agreement
25 or modify its recommendation for sentence if, prior to the imposition of sentence,
26 Defendant is charged ^{commits, and a/s D.A.} or convicted of any criminal offense whatsoever or if
27 Defendant tests positive for any controlled substance.
28

1 15. Appeal Rights:

2 Defendant understands that he has a limited right to appeal or challenge
3 the conviction and sentence imposed by the Court. If the Court imposes a
4 sentence of not more than 15 years imprisonment, Defendant hereby expressly
5 waives his right to appeal his conviction and the sentence the Court imposes,
6 including any restitution order for the benefit of Victim 1 up to \$5,000.00, and
7 any order of supervised release. Accordingly, Defendant retains only the right to
8 appeal any restitution order to Victim 1 in excess of \$5,000.00. Defendant
9 further expressly waives his right to file any post-conviction motion attacking
10 his conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255,
11 except one based upon ineffective assistance of counsel based on information
12 not now known by Defendant and which, in the exercise of due diligence, could
13 not be known by Defendant by the time the Court imposes the sentence.

14 16. Notice of Sex Offender Registration:

15 Defendant has been advised and understands, that as a convicted sex
16 offender, under the Sex Offender Registration and Notification Act, a federal
17 law, Defendant must register and keep the registration current in each of the
18 following jurisdictions: the location of Defendant's residence, the location of
19 Defendant's employment; and, if Defendant is a student, the location of
20 Defendant's school. Registration will require that Defendant provide
21 information that includes name, residence address, and the names and addresses
22 of any places at which Defendant is or will be an employee or a student.
23 Defendant understands that he must update his registrations not later than three
24 business days after any change of name, residence, employment, or student
25 status. Defendant understands that failure to comply with these obligations
26 subjects Defendant to prosecution for failure to register under federal law, 18
27 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.
28

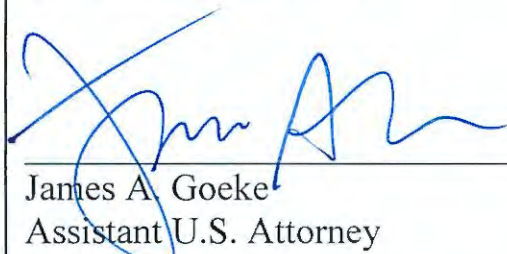
17. Integration Clause:

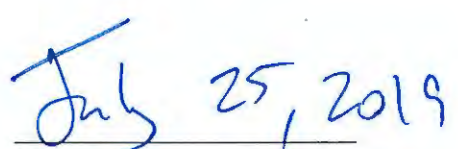
The United States and Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and Defendant, and no other promises, agreements, or conditions exist between the United States and Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington and cannot bind other federal, state or local authorities. The United States and Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

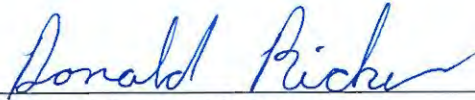
William D. Hyslop
United States Attorney


James A. Goeke
Assistant U.S. Attorney


Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement and no

1 one has threatened or forced me in any way to enter into this Plea Agreement. I
2 am agreeing to plead guilty because I am guilty.

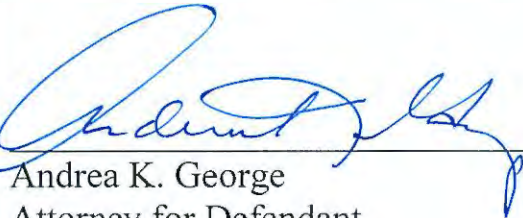
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5
6 DONALD L. RICKER
7 Defendant

7-25-19

Date

8 I have read this Plea Agreement and have discussed the contents of the
9 agreement with my client. The Plea Agreement accurately and completely sets
10 forth the entirety of the agreement between the parties. I concur in my client's
11 decision to plead guilty as set forth in the Plea Agreement. There is no legal
12 reason why the Court should not accept Defendant's plea of guilty.

13
14 
15

16 Andrea K. George
17 Attorney for Defendant

07.25.19

Date